

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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PCT

WRITTEN OPINION (PCT Rule 66)

Date of mailing
(day/month/year) 20.01.2004

Applicant's or agent's file reference
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REPLY DUE within 2 month(s)
from the above date of mailing

International application No.
PCT/GB 03/00141

International filing date (day/month/year)
15.01.2003

Priority date (day/month/year)
16.01.2002

International Patent Classification (IPC) or both national classification and IPC
B07C5/342

Applicant
TITECH VISIONSORT AS et al.

1. This written opinion is the **second** drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☒ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application
3. The applicant is hereby **invited to reply** to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 16.05.2004

Name and mailing address of the international preliminary examining authority:



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I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-15 as originally filed

Claims, Numbers

1-80 as originally filed

Drawings, Sheets

1/12-12/12 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been and will not be examined in respect of:

☐ the entire international application,

☒ claims Nos. 68-80

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for the said claims Nos. 68-80

2. A written opinion cannot be drawn due to the failure of the nucleotide and/or amino acid sequence listing to comply with the Standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard.

☐ the computer readable form has not been furnished or does not comply with the Standard.

IV. Lack of unity of invention

1. In response to the invitation (Form PCT/IPEA/405) to restrict or pay additional fees, the applicant has:

☐ restricted the claims.

☐ paid additional fees.

☐ paid additional fees under protest.

☐ neither restricted nor paid additional fees.

2. ☒ This Authority found that the requirement of unity of invention is not complied with for the following reasons and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees:

see separate sheet

3. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this opinion:

☐ all parts.

☒ the parts relating to claims Nos. 1, 8.

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

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International application No. PCT/GB 03/00141

Novelty (N)	Claims	1,8
Inventive step (IS)	Claims	
Industrial applicability (IA)	Claims	

2. Citations and explanations

see separate sheet

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The method according to independent claim 68 with its dependent claims and the apparatus according to independent claim 73 with its dependent claims can not be examined due to the fact that these claims were not originally filed (Article 15 (3) PCT) and, thus, no search report had been made. Their features are only disclosed in the description.

Re Item IV

Lack of unity of invention

1. Although claims 1, 18, 31, 44 and 50, directed to a method and, respectively, claims 8, 23, 36, 47 and 60, directed to an apparatus, have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought in respect of the terminology used for the features of that subject-matter.
2. The principle idea of the application seems to be the detection of the different colours and/or compositions by analysing the varied radiation in at least five narrow wavelength bands in the visible spectrum.
3. The aforementioned claims therefore lack conciseness. Moreover, lack of clarity of the claims as a whole arises, since the plurality of independent claims makes it difficult, if not impossible, to determine the matter for which protection is sought, and places an undue burden on others seeking to establish the extent of the protection.

Hence, claims 1, 18, 31, 44 and 50 and 8, 23, 36, 47 and 60 do not meet the requirements of Article 6 PCT.

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

I.

1. Considering the method of claim 1 and the disclosure of DE-A-19751862 (D1, listed in the description) it is to say that this document discloses already the identification and separation of articles from a conveyor belt by detecting the results of a spectroscopic result, see, e.g. its figure with the description relating thereto. The feature of present claim 1 '... which characteristic is not detectable by the naked eye or a colour camera ...' seems not to be a distinguishing feature with respect to D1.

Thus, all the steps of claim 1 are known and its method seems not to fulfil the requirements of Article 33 PCT with respect to novelty.

2. The reasons given with respect to claim 1 are also valid for claim 8, directed to an apparatus. Therefore, the subject-matter of claim 8 seems also not to fulfil the requirements of Article 33 PCT with respect to novelty.
3. The applicant is asked to file an uniform set of claims, containing only the minimum number of independent claims. The scope of the invention should be clear from the features of the claims.

II.

1. In contradiction with the requirements of Rule 6.3(b)(i) and (ii) PCT Rule 29 (1) EPC, the independent claims have not been cast in the two part form, with those features which in combination are part of the closest prior art being placed in the preamble.
2. The technical features mentioned in the claims are not followed by reference characters relating to these features, contrary to Rule 6.2(b) of the PCT. This applies to both the preamble and characterising portion.
3. The dependent claims are not supported by the description, contrary to Article 6

**WRITTEN OPINION
SEPARATE SHEET**

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PCT. This could easily be done by adding a sentence like: "Further embodiments of the invention are defined in the dependent claims."